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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,514	09/05/2003	John P. Schromen	P06363US00	8029

22885 7590 07/15/2004

MCKEE, VOORHEES & SEASE, P.L.C.  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES, IA 50309-2721

EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/656,514

Applicant(s)

SCHROMEN ET AL.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim(s) 1-3, 6-8, 14-22 is/are rejected under 35 U.S.C. 102(b) as being anticipated  
by Wagner, Jr (3858814).

Wagner discloses:

Claims 1, 6:

first & second track assembly / sprockets (col. 2, ln 25-26; ref 22 & 24 & lower ends);  
lift assembly chain/belt trained around the upper & lower ends (col. 2, ln 29; ref 26, 28)  
& having front & rear belt (chain) surface (fig 1);  
power/drive source to drive at least one of the upper and lower ends (col. 2, ln 28);

Claims 2, 3, 7, 8:

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frame (col. 2, ln 15); vanes/paddles (ref 36) independently adjustable (fig 4; col. 3, ln 15-17);

Claims 14-19:

belt trained around the upper & lower ends (col. 2, ln 29; ref 26, 28) & having front & rear belt (chain) surface (fig 1);

1st & 2nd pit & channel (at ref 34), moving the belt assembly along the length of the pit & both directions (one upward & another downward the belt/chain).

As applied to claim(s) 14-22, in view of the structure disclosed/taught by Wagner, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim(s) 4-5, 9-10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Jr (3858814), in view of Merten et al (5641058).

Wagner discloses the claimed device except for showing a hydraulic belt/chain tightener.

Merten discloses that it is known in the art to provide a hydraulic tightener for endless belts in the form of chains or the like (it is noted that chains are known to be a sub group of belts as taught by Merten).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the belt of Wagner with the teachings of Merten, in order to utilize an improved and more accurate belt tightener so that an optimum chain/belt tension is set automatically (Wagner: Abstract).

***Response to Arguments***

5. Applicant's arguments filed 5/26/2004 have been fully considered but they are not persuasive.

Examiner reviewed Applicant's arguments & amendment, it is noted however, that Wagner's does meet the limitations claimed, although the amendment sets forth now a forward direction the device is moving, however it does not change the claim in regards to the elements claimed, such as the claim still recites an endless conveyor belt assembly with one power source, which conveyor belt assembly capable of lifting up material and depositing it at its upper end. It is further noted that belt tensioning devices such as the one taught by Merten also well known to be used on any belt assembly, thus further meeting limitations recited in the dependent claims. As outlined above limitations of the claims are clearly met by the prior art.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács  
Primary Examiner  
Art Unit 3671

ÁFK